IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 40 of 1995.

Judgement reserved on: 27.4.2007.

Date of decision: 1.5.2007.

Battan Singh **…Appellant.**

Versus

State of H.P. & anr. **…Respondents.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: **Mr. Bhupender Gupta, Senior Advocate with Mr. Ajit Jaswal, Advocate.**

For respondents : **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, Judge.

This regular second appeal was admitted on the following substantial questions of law:-

1. When the predecessor in interest of plaintiff- appellant is shown in possession over the land in question in the Jamabandi for the year 1954-55, in the absence of any legal order to negative the earlier entries showing ownership and possession whether the presumption attached to them or the earlier entries would take precedence over the latter entries?
2. Whether the Lower Appellate Court was justified in refusing the appointment of Local Commissioner and rejecting the prayer for inspecting the spot merely on

---

Whether reporters of the local papers may be allowed to see the judgment?

the ground that the case remained pending for six years.

3. Whether it is always essential for a person claiming adverse possession to show that his possession was notorious and was in the knowledge of the person claiming title thereof?

4. When there is a dispute regarding the title whether the court of limited jurisdiction i.e. Revenue Officers have the jurisdiction to initiate the ejectment proceedings against the plaintiff- appellant?

5. When the plaintiff- appellant's possession over the land in question was duly established, whether the relief of injunction could have been denied to the plaintiff- appellant?

2. Relevant facts for the disposal of the appeal may be noticed. Ram Singh, the father of the appellant-plaintiff, filed a suit seeking declaration that he was owner in possession of 11 Bighas 11 Biswas of land depicted by khasra No. 1769/1 khewat No. 366 min, khatauni No. 885 min, situate in village Hatwar Pargna Ajmerpur, Tehsil Ghumarwin, District Bilaspur and also for permanent prohibitory injunction, restraining the defendants-respondents from causing any interference in his possession or dispossessing him from the suit land. It was alleged that the suit land was part of khasra No. 1769, which was initially entered in the ownership and possession of the ex-ruler of erstwhile State of Bilaspur and later on the State of Himachal Pradesh. It was alleged that about 60 years back, the father of the plaintiff, i.e. the appellant's father's father had occupied the suit land that is to say 11 Bighas 11 Biswas area, and made it irrigable by digging a Kuhal and ever since the possession had been with the father of

the plaintiff and after his death with the plaintiff and the possession was continuous, open, hostile and as of right and thus the plaintiff had acquired title by prescription. It was alleged that on 31.10.1981, Collector, 2nd Grade (Tehsildar) visited the spot and passed an order of ejectment against the plaintiff and also imposed a fine of Rs. 1000/-. The order was alleged to be illegal, void and without jurisdiction.

3. Respondents-defendants contested the suit. They challenged the jurisdiction of the court to try the suit. Plea of estoppal was also raised. Plaint was alleged to be liable to be rejected on account of non-service of notice, under Section 80 CPC. Objection with regard to the valuation of the suit for the purposes of court fee and jurisdiction, was also raised. On merits, it was alleged that the suit land belonged to the defendants-respondents and it was encroached upon by the plaintiff- appellant sometime in the year 1981, and, therefore, the proceedings, under Section 163 of the H.P. Land Revenue Act, had been initiated against him and ultimately order, dated 31.10.1981, was passed and the appeal filed by the plaintiff against the said order had been dismissed by the Sub Divisional Collector. Trial court framed various issues arising out of the pleadings of the parties and tried the matter and ultimately concluded that the plaintiff had not acquired title by prescription and the suit was not maintainable. Civil Court was held to have the jurisdiction to try the suit. Other issues based on the preliminary objections of the respondents- defendants were answered against them. Appeal filed by the plaintiff in the court of District Judge against the decree of the trial court was dismissed.

4. It appears that during the pendency of the matter in the court of District Judge, Ram Singh, the original plaintiff died and the present appellant, being his son and the sole legal representative, came on record.

5. I have heard the learned counsel for the parties and perused the record. It was submitted by the learned counsel for the appellant, while dealing with substantial question No.1, that in the jamabandi for the year 1954-55, name of the father of the original plaintiff Ram Singh, was there in the column of possession, but in the subsequent jamabandies, his name was omitted without any order by the competent authority. He also submitted that figuring of the name of the plaintiff's father in the said jamabandi is indicative that the possession of the appellant- plaintiff and his forefathers was very old. It is true that in the jamabandi for the year 1953-54, copy Ex. P-7, name of the father of the original plaintiff is there in the column of possession, but it is only with respect to 7 Biswas area and the kind of the land is recorded as Gair Mumkin Khud. This very entry finds mention in the jamabandi for the year 1957-58, copy Ex. D-8. On the basis of these two entries in the jamabandies, which are not repeated in the subsequent jamabandies, it cannot be said that the appellant's predecessors had been in possession of 11 Bighas 11 Biswas land, which is the subject matter of the present litigation, since the year 1953-54. As already noticed Lachhman, the father of the original plaintiff, was recorded in possession of only 7 Biswas of land, forming part of khasra No. 1769, the total area of which is 211 Bighas. Furthermore, there is nothing on record suggesting that 7 Biswas area, which as per the aforesaid two jamabandies, was in possession of the father of the original plaintiff, is included in the suit land. In other words, the identity of this 7 Biswas of land is not established. Moreover, 7 Biswas area was only in the nature of Khud and, therefore, it cannot be said that the possession of the father of the original plaintiff was notorious. As a consequence of the above stated position, question No.1 is answered against the appellant- plaintiff.

6. Appellant sought appointment of a Local Commissioner by making an application in the trial court and not in the appellate Court, as stated in the substantial question of law No.2. The trial court dismissed the application summarily. Before the first appellate court, it was urged that the trial court was not justified in rejecting the application. The appellate court has observed that the application was for spot inspection or in the alternative for appointment of a Local Commissioner and it having been filed about four years after the institution of the suit, was belated and the object was to collect evidence for the plaintiff.

7. The case of the appellant- plaintiff is that he and his predecessors had been in possession of the land for about sixty years prior to the institution of the suit. Suit was filed in the year 1982. It has come in evidence that there stand some trees of Shisham and Keonth etc. and the girth of the trunk of some of the trees is 4 to 5 feet. By getting the trees inspected from the Local Commissioner what the appellant intended to prove was the age of the trees. However, the age of the trees would in no way prove the length of the period for which the appellant and his predecessors had been in possession, because it is not the case of the appellant- plaintiff that the trees were planted by him or his predecessors. The case is that the appellant and his predecessors had been managing these trees and lopping them. Therefore, local inspection would have served no purpose. Therefore, no fault can be found with the order of rejection of the application of the appellant for spot inspection or in the alternative for appointment of Local Commissioner. Hence, the question is answered against the appellant.

8. As regards question No.3, it may not be essential for a person in adverse possession to bring it to the knowledge of the true owner by proclamation or some other overt act that he is in possession of his (true

owner's) property and holds the same adversely to him, but his possession has to be open so that the true owner may come to know that someone else is in possession of his property and is laying adverse claim to it.

9. In the present case, as already noticed hereinabove, the father of the original plaintiff was recorded in possession of only 7 Biswas of area of the suit land that too when that portion was part of Khud, per entry in the jamabandies for the year 1953-54 and 1957-58, copies Ex. D -7 and Ex. D- 8. Therefore, his possession could not such (the land being part of khud) as to give sufficient notice to the true owners i.e. the respondents-defendants that he had been in possession thereof. In any case, as already noticed, that 7 Biswas area is not shown to be part of the suit land. There is no entry in the revenue papers suggesting that the appellant or his predecessors had been in possession of the suit land. Also, the evidence on record suggests that the requisite animus for acquisition of title by prescription was not there. Father of the appellant while in the witness box, as PW 1, stated that he was prepared to give an area equal to the suit land out of his own land to the government, in lieu of the suit land, meaning thereby that he did not consider himself to be the owner of the suit land. If that is so, it cannot be said that he held the suit land as of right or his possession was hostile to the true owners. Similar statement was made by Ram Singh before the Assistant Collector, 2nd Grade in the course of the proceedings, under Section 163 of the Land Revenue Act. Copy of the statement is Ex. DX. In this statement also he offered to give an area from his own land to the government, in exchange for the suit land.

10. As a result of the above discussion, it is held that the appellant and his predecessors having lacked the requisite animus for acquiring title by prescription, cannot claim that they have acquired title by

adverse possession. Consequently, question is answered against the appellant-plaintiff.

11. So far as question No. 4 is concerned, proceedings for the ejectment of the father of the plaintiff were initiated in the year 1981 and the order for ejectment was also passed in the same year. Amendment to Section 163 of the Land Revenue Act, giving the powers of civil court to the Assistant Collector, Ist Grade, to decide the question of title, raised in the proceedings for ejectment of an encroacher, in the manner and by following the procedure laid down for trial of a civil suit, was made in the year 1988. Prior to this amendment, the Assistant Collectors had the jurisdiction to pass the order of ejectment by making summary inquiry and the aggrieved person, if claiming title by adverse possession, had the remedy of approaching the civil court.

12. The above stated position apart, the record of the proceedings, under Section 163 of the H.P. Land Revenue Act, copies whereof have been adduced in evidence, shows that question of acquisition of title by adverse possession had not been raised by the father of the appellant. On the contrary, as already noticed, he offered to surrender an area equal to the suit land out of the land owned by him, in lieu of the suit land, which meant that he did not set up the plea of acquisition of title by adverse possession.

13. For the foregoing reasons, question No.4 is also answered against the appellant- plaintiff.

14. It is true that the plaintiff (appellant's father) had been in possession of the suit land when the suit was filed, but at the same time there was an order for his ejectment lawfully passed by the Assistant Collector, 2nd Grade in exercise of his jurisdiction, under Section 163 of the H.P. Land Revenue Act, and apprehending his physical eviction pursuant to

this order, the appellant's father filed the suit. Now when there was a lawful order for the ejectment of the appellant's father passed by a competent authority in exercise of statutory powers, an injunction restraining the respondents- defendants from evicting the appellant- defendant could not have been granted. Hence, this question is also answered against the appellant- plaintiff.

15. As an upshot of the above discussion and findings, the appeal is dismissed.

May 1, 2007. **(Surjit Singh),**
(Hem) **Judge.**